

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 914 of 2002

Smt.Ratnabai Vishnu Gaikwad ...Appellant

V/s

Vishnu Sitaram Ingawale ..Respondent

Shri Pertaprao J. Shinde for Appellant

CORAM:S.R.SATHE, J.

DATED:20th June 2005

P.C. :-

1. Heard the learned Advocate for the Appellant.
None appeared on behalf of Respondent.

2. Plaintiff's suit for redemption and possession of mortgage property has been dismissed by the trial Court. The said finding has been confirmed by the first appellate Court.

3. The only point agitated before me by the learned Advocate for the Appellant-plaintiff is that transaction was mortgage and once a mortgage is always a mortgage and the said point has not been considered by the Courts below.

4. However, from the perusal of the judgments of both the Courts, it appears that both the Courts

below have taken into consideration the recitals in the document and have specifically come to the conclusion that the transaction in question was not mortgage but of conditional sale. It has also been specifically observed by the trial court that the period of 10 years was mentioned in the agreement was an essence of the contract. Moreover, though it is alleged by the defendant at one point of time that amount of Rs.9,000/- have been paid towards the transaction in question, the same is not actually proved. In other words, there is no evidence to show that more than the agreed price mentioned in deed was paid.

5. Under the circumstances findings recorded by the trial Court as well as the first appellate court appear to be legal and correct. There is no error of law nor it can be said that there is any perversity in appreciating the evidence. There is no substantial question of law involved in this matter.

6. Hence the appeal is dismissed.

(S.R.SATHE, J.)